

ENTERED

December 20, 2016

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

NALCO COMPANY,

Plaintiff,

vs.

BAKER HUGHES INCORPORATED, *et al*,

Defendants.

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CIVIL ACTION NO. 4:09-cv-01885

ORDER ON MOTION TO DISMISS

Pending before the Court is the defendants', Baker Hughes, Inc. and Baker Petrolite Corporation (the "defendants"), motion to dismiss. (Dkt. No. 160). The plaintiff, Nalco Company (the "plaintiff"), has filed a response in opposition to the defendants' motion to dismiss (Dkt. No. 161) and the defendants have filed a reply. (Dkt. No. 162). After having carefully considered the motion, response, reply, the pleadings and the applicable law, the Court determines that the defendants' motion to dismiss should be **DENIED**.

In making this determination, the Court is guided by the pleadings and the applicable law which dictate that, under the demanding strictures applicable on a motion to dismiss brought pursuant to Fed. R. Civ. P. 12(b)(6), the plaintiff's allegations as stated in its Complaint are entitled to the presumption of truthfulness. *Oppenheimer v. Prudential Sec., Inc.*, 94 F.3d 189, 194 (5th Cir. 1996) (citing *Mitchell v. McBryde*, 944 F.2d 229, 230 (5th Cir. 1991)). As such, when taken as true, the Court cannot say that the plaintiff's factual allegations are insufficient to raise a right to relief above the speculative level. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 1965, 167 L. Ed.2d 929 (2007) (reasoning that a dismissal is appropriate only if, the "[f]actual allegations [are not] enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in

fact).” Nor does this Court find the plaintiff’s allegations, at this stage of the proceedings, to be insufficient to satisfy the particularity requirements of Fed. R. Civ. P. 9(b). The Court determines that the plaintiff has alleged adequate facts sufficient to put the defendants on notice of its claims against them. Moreover, supplemental factual support is likely in the defendants’ possession and/or inaccessible until discovery is well underway and a reasonable expectation exist that discovery will reveal other evidence and/or elements as may be implicated by the plaintiff’s claim. Thus, the defendants’ motion to dismiss the plaintiff’s claims is **DENIED**.

It is so **ORDERED**.

SIGNED on this 20th day of December, 2016.

A handwritten signature in black ink, appearing to read "Kenneth M. Hoyt", written over a horizontal line.

Kenneth M. Hoyt
United States District Judge